

Before the
Administrative Hearing Commission
State of Missouri



HOLMES OSBORNE,)	
)	
Petitioner,)	
)	
vs.)	No. 14-1820 EC
)	
MISSOURI ETHICS COMMISSION,)	
)	
Respondent.)	

DECISION

We dismiss the complaint filed by Holmes Osborne because it was untimely filed.

Procedure

On November 17, 2014, Osborne filed a complaint appealing a decision of the Missouri Ethics Commission (the “MEC”). We sent the MEC a copy of the complaint and our notice of complaint/notice of hearing on November 19, 2014.

On December 17, 2014, the MEC filed a motion for involuntary dismissal, or in the alternative, motion for summary decision, along with affidavits of its custodian of records, James Klahr, and investigative supervisor, Ron Getty. We gave Osborne until January 5, 2015 to respond to the MEC’s motion, but he did not respond.

Because the motion for involuntary dismissal is accompanied by material outside the pleadings, we treat it as a motion for summary decision. Regulation 1 CSR 15-3.446(6)¹ permits us to decide this case without a hearing if the MEC establishes facts Osborne does not genuinely dispute and entitle the MEC to a favorable decision. Facts may be established by admissible evidence such as a stipulation, pleading of the adverse party, discovery responses of the adverse party, affidavits, or any other evidence admissible under law. 1 CSR 15-3.446(6)(B).

We make the following findings of fact based on the authenticated business records of the MEC accompanying the motion, the investigator's affidavit, and Osborne's complaint.

Findings of Fact

1. In 2010 and 2012, Osborne ran unsuccessfully for a seat in the Missouri House of Representatives. Candidate committees were established for Osborne in 2010, 2012, and 2014, although Osborne withdrew his candidacy in 2014.
2. On October 2, 2014, the MEC held a hearing on its own complaint of certain violations of campaign finance disclosure laws by Osborne.
3. On October 6, 2014, the MEC issued its Findings of Fact, Conclusions of Law, and Order (the "proposed action"), concluding that violations had occurred, but would not be referred for criminal prosecution, and ordering payment of fees and filing of supplemental reports and disclosures to the MEC.
4. On October 6, 2014, the MEC mailed the proposed action and a notice of appeal rights to Osborne at the address he had verified as current at the hearing. The notice of appeal rights advises him that any appeal must be filed no later than fourteen days following receipt of actual notice of the MEC's proposed action.

¹ All references to the CSR are to the Missouri Code of State Regulations as current with amendments included in the Missouri Register through the most recent update.

5. The proposed action and notice of appeal rights were not returned to the MEC after being deposited in the mail.

6. The proposed action and notice of appeal rights were sent certified mail on October 6, 2014, but was returned to the MEC unclaimed on December 3, 2014.

7. On October 31, 2014, the MEC's investigative supervisor hand-delivered the proposed action and notice of appeal rights to Osborne.

8. Osborne filed his appeal on November 17, 2014.

9. November 17, 2014 was more than 14 days after October 31, 2014.

Conclusions of Law

We have authority under § 105.961.3² to hear appeals from the MEC's proposed actions. But in this case, the MEC argues that we lack such authority because Osborne's complaint was untimely filed. We agree. Section 105.961.5 provides, in pertinent part:

The Missouri ethics commission shall give actual notice to the subject of the complaint of the proposed action as set out in this section. The subject of the complaint may appeal the action of the Missouri ethics commission, other than a referral for criminal prosecution, to the administrative hearing commission. Such appeal shall stay the action of the Missouri ethics commission. Such appeal **shall be filed no later than fourteen days after the subject of the commission's actions receives actual notice** of the commission's actions.

(Emphasis added.)

Osborne was given actual notice of the MEC's proposed action no later than October 31, 2014, when it was hand-delivered to him along with a notice of appeal rights. He nevertheless failed to file an appeal within 14 days after receiving such notice. At that point, the MEC's

² Statutory references are to RSMo Supp. 2013 unless otherwise noted.

determination that Osborne violated the campaign finance laws of Missouri became binding.

Impey v. Missouri Ethics Commission, 442 S.W.3d 42, 47 (Mo. banc 2014).

“[A]dministrative agencies—legislative creations—possess only those powers expressly conferred or necessarily implied by statute.” *United Pharmacal Co. of Mo., Inc. v. Mo. Bd. of Pharmacy*, 208 S.W.3d 907, 913 (Mo. banc 2006) (internal quotation omitted). Thus, our authority to act comes from the statutes alone. The untimely filing of Holmes’ appeal deprives us of authority to hear it. If we lack authority to hear a complaint, we can take no action other than to exercise our inherent power to dismiss it. *State Bd. of Registration for Healing Arts v. Draper*, 280 S.W.3d 134, 136 (Mo. App., E.D., 2009).

Summary

Because Osborne’s appeal was untimely filed, we lack authority to hear it. We grant the MEC’s motion to dismiss and cancel the hearing.

SO ORDERED on January 26, 2015.

/s/ Karen A. Winn

KAREN A. WINN
Commissioner